

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 154 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BAHADUR ALI BABUBHAI CHARANIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 154 of 2001
MR PJ KANABAR for Petitioner No. 1
Mr. H.L. Jani, APP for Respondent No. 1
..... for Respondent No. 2
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Kanabar for the petitioner and Mr.H.L.Jani, learned APP for the

respondent State of Gujarat. Brief facts of the present petition are as under:

Initially, wife of the present petitioner namely Rasidaben, his daughter Aminaben and son Imran filed an application for maintenance being criminal miscellaneous application no. 77 of 1990 in the Court of the learned Chief Judicial Magistrate, Amreli against the petitioner which came to be allowed by the learned Chief Judicial Magistrate, Amreli by his judgment and order dated 30.11.1991 by directing the husband - petitioner herein to pay to the respondent wife an amount of Rs.400.00 p.m. and Rs.250.00 each to the son and daughter total of which comes to Rs.900.00 from the date of the said application. Against the said order dated 30.11.1991, as mentioned in para 7 page 29, the petitioner approached the Court of learned sessions Judge, Amreli by filing revision application challenging the very same order but ultimately said revision application was withdrawn by the petitioner. Thereafter, wife of the petitioner and the son and daughter approached the learned Chief Judicial Magistrate for enhancement of the amount of maintenance by filing criminal miscellaneous application no. 309 of 1993 which was decided by the learned Chief Judicial Magistrate, Amreli by order dated 31.8.1996 and allowed it partly by directing the petitioner to pay Rs.500.00 to the wife and Rs.350.00 to the son and daughter each per month. Against that order, criminal revision application no. 82 of 1996 was preferred by the wife, son and daughter of the petitioner in the court of the learned Sessions Judge which came to be allowed by the sessions court by judgment and order dated 3.2.2000 and the same was allowed partly by enhancing the amount of maintenance to be commencing from the date of the application 20th October, 1993. This order has not been challenged by either side before this Court. Thereafter, wife, daughter and the son of the petitioner approached the Court of learned Chief Judicial Magistrate, Amreli by filing criminal misc. application no. 324 of 1999 u/s. 125(3) of the Code of Criminal Procedure, 1973 for recovery of the amount of maintenance which was not paid by the petitioner as per the courts order. The learned Chief Judicial Magistrate, Amreli passed an order below Exh.1 of the said application on 24.8.2000 directing the petitioner to pay maintenance allowance in favour of the respondent No.2 daughter even after 13th December, 1998 as per the order passed by the learned Chief Judicial Magistrate. Said order was challenged by the petitioner before the learned Sessions Judge, Amreli by filing criminal revision application no. 65 of 2000 wherein the learned Sessions Judge, Amreli rejected the revision

application filed by the petitioner by order dated 8.1.2001 against which the petitioner has approached this court.

2. Learned advocate Mr. Kanabar appearing for the petitioner has contended that the respondent No.2 is a daughter of the petitioner who has attained the majority on 19th December, 1997 and, therefore, she is not entitled to claim the maintenance as per the order passed by the learned Chief Judicial Magistrate, Amreli. Date of birth has also been mentioned which is dated 18th December, 1979. It is also not the case of the petitioner that the respondent No.2 daughter has married so far. Before the learned Chief Judicial Magistrate, Amreli, it was the contention of the petitioner that once the daughter has attained the majority on 19th December, 1997, under section 125(1) (b)(c), she is not entitled to maintenance from the father. This contention was negatived by the learned Chief Judicial Magistrate, relying upon relevant provisions of section 125(1)(c) of the Code of Criminal Procedure, 1973 by directing the petitioner to pay the amount of maintenance even after the date on which the respondent No.2 attained majority. Learned advocate Mr. Kanabar has fairly submitted that before the revisional court, advocate appearing for the respondent No.2 has fairly admitted that the relevant provisions of section 125(1) (c) of the Code are not applicable and, therefore, it is the duty of the Court to consider relevant provisions of section 125 (1) (b) of the Code and, therefore, both the Courts below have committed error and therefore, the orders passed by both the Courts below are required to be quashed and set aside. In support of his contentions, he has relied upon the decision of the apex court reported in AIR 1979 SC 381 and has pointed out that there was no restriction in the old Code of Criminal Procedure but because of the new section, there is change and, therefore, daughter or the son, after attaining the majority, are not entitled to maintenance from the father. This change has been considered and discussed by the apex court in the aforesaid decision. Learned advocate Mr. Kanabar has read the relevant portion from the aforesaid decision of the apex court. I have considered the same. Learned advocate Mr. Kanabar has also contended that the petition under Article 227 of the Constitution of India is maintainable against the orders passed by the sessions court in revision. According to him, this Court is having discretion to entertain the petition in case the Court is satisfied that there was miscarriage of justice.

Learned Addl. P.P. Mr. Jani appearing for the

respondent State of Gujarat has submitted that considering the relevant provisions of section 397(3) of the Code of Criminal Procedure, 1973, once the order passed by the learned Magistrate has been challenged before the sessions court, at that time, the petitioner was having option to challenge the same either before the sessions judge or before the High Court and once the option has been exercised by the petitioner and the order has been challenged before the sessions court, then, second revision is barred as per section 397(3) of the Code. He has placed reliance upon the decision of the apex court reported in AIR 1979 SC 381. He has also submitted that the order has been passed by the courts below after considering the contentions raised by the petitioner that the daughter has attained majority and as such she is not entitled to maintenance from the father.

I have considered the submissions made by the learned advocates for the parties. It is necessary to refer to the relevant provisions of section 125 of the Code of Criminal Procedure, 1973. Sub Section (1) of Section 125 of the Code reads as under:

- (1) If any person having sufficient means neglects or refuses to maintain -
 - (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
 - (d) his father or mother, unable to maintain himself or herself."

Keeping in view the relevant provisions of section 125 of the Code of Criminal Procedure, it is necessary to refer to the view of the apex court in case reported in AIR 1997 SC 3280. In this case, the apex court has considered the very relevant aspect which has been raised before this Court and after considering the muslim law and also after considering the effect of the provisions of section 125 of the Code of Criminal Procedure, 1973, following observations were made by the apex court in para 10 of the said judgment.

"The obligation of a Muslim father, having sufficient means to maintain his minor children,

unable to maintain themselves, till they attain majority and in case of female till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife." (Emphasis supplied)

The above observations made by the apex court in the aforesaid decision would make it very much clear in respect of the female child that the female child is entitled to claim maintenance from the father if the father is having sufficient means to pay the same upto the date of marriage which is considered by the apex court. In this case, it is and it was not the case of the petitioner that he is not having sufficient means to maintain his wife and children. In view of these facts, learned Chief Judicial Magistrate, Amreli cannot be said to have erred in granting maintenance allowance in favour of the respondent No.2 daughter with effect from 13th December, 1998 which has ultimately been confirmed by the sessions court in re vision preferred by the petitioner husband. The learned sessions judge while rejecting the revision preferred by the petitioner has referred to the aforesaid decision of the apex court reported in AIR 1997 SC page 3280. It is not the case of the petitioner that his daughter has married and, therefore, she is not entitled to claim maintenance from him. It is also not the case of the petitioner that respondent No.2, daughter is able to maintain herself. When the Court asked the question to Mr. Kanabar that if it is held that the daughter who is residing with the divorced wife and who has attained majority is not entitled to claim maintenance from her father, then, who else is responsible to maintain her, Mr. Kanabar has not been able to answer the said question. Even otherwise, female child, after her getting married, would become the responsibility of her husband and prior to her marriage, the father will be the person responsible for her maintenance.

Therefore, considering the facts and circumstances of the case and also considering the orders passed by the Courts below and also in view of the observations made by the apex court in the aforesaid decision reported in AIR 1997 SC 3280, as per my view, there is no error committed by the Courts below while passing the orders in question which would call for interference while exercising the powers under Article 227 of the Constitution of India.

On merits, I am satisfied about the orders passed by the learned Chief Judicial Magistrate, Amreli as well

as the orders passed by the learned Sessions Judge, Amreli in revision and, therefore, I am not passing any orders as regards technical aspect as to whether the petition is maintainable or not.

In view of the aforesaid observations, the present petition is required to be rejected. Same is rejected accordingly.

27.7.2001. (H.K. Rathod, J.)

Vyas